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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,659	06/22/2000	ERNST WAGNER	0652.2050000	1008

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05/03/2002

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EXAMINER

BANSAL, GEETHA P

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 05/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/529659

Applicant(s)

Wagner et al

Examiner

Gatha Bando

Group Art Unit

7642

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE -3- MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

☒ Responsive to communication(s) filed on 2/4/02

☒ This action is FINAL.

- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 15-28 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 15-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

1. Applicant's amendment filed 2/4//02 (Paper No: 10/B) are acknowledged. Accordingly, claims 15-17 are amended.

Claims 15-28 are being examined.

Response to Arguments

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. The rejection of claims 12 under 35 U.S.C. 112, 2nd paragraph is withdrawn in view of the arguments as well as the amendment for paragraph 6A of the previous office action.

4A. The rejection of claims 15-28 under 35 U.S.C. 112, 2nd paragraph is maintained for paragraphs 6B and 6C of the previous office action. Applicant's arguments and amendments have been considered but they are not persuasive. With respect to Applicant's response in section VB, it is not clear if the intention of the claim is for e.g. that a 50ng dose or a 5µg dose both be released over either an 8 day period or in a 1/2 hour period, or over other times in between. Secondly, "charged" can be interpreted to mean bound on the surface of the cell; or internalized by a tumor cell and be available in the interior of the cell; or exhibit some effect of the peptide such as activation of a certain property or pathway of the cell. It is not clear what the metes and bound are.

4B. The rejection of claims 15-28 under 35 U.S.C. 103(a) is maintained. Applicant's arguments and amendments have been considered but they are not persuasive. Applicant argues that the references either alone, or in combination, do not teach or suggest the claimed invention, because the references do not teach tumor antigen source as a separate and distinct from a release

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system. Applicant misunderstands the purpose of the Porgador reference as teaching that the primary reason for the transfected cell of Porgador was to establish it as a source of IFN- γ . This is not so if the references are understood in the proper context. Porgador clearly uses IFN- γ transfected tumor cells as a source of tumor antigen, and the IFN- γ to stimulate an immune response for weak antigens. Applicant's invention is also utilizing IFN- γ to enhance the immunogenicity. The combined references teach to one of ordinary skill in the art the claimed invention. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as set out both in the previous office action and the explanations above, the use of IFN- γ along with a source of tumor antigen is to increase the immunogenicity of tumor antigens which are, in general, considered to be weak antigens.

5. No claims are allowed.

6. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Papers related to this application may be submitted to Group 1640 by facsimile transmission. Papers should be faxed to Group 1640 via the PTO Fax Center located in Crystal

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Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 308-4242 or (703) 305-3014.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Geetha P. Bansal whose telephone number is (703) 305-3955. The examiner can normally be reached on Mondays to Fridays, and alternate Wednesdays from 7:00am to 4:30pm and alternate Fridays from 7:00am to 3:30pm. A message may be left on the examiner's voice mail service.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Anthony Caputa, can be reached on (703) 308- 3995.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

April 29, 2002


GEETHA P. BANSAL
PRIMARY EXAMINEE